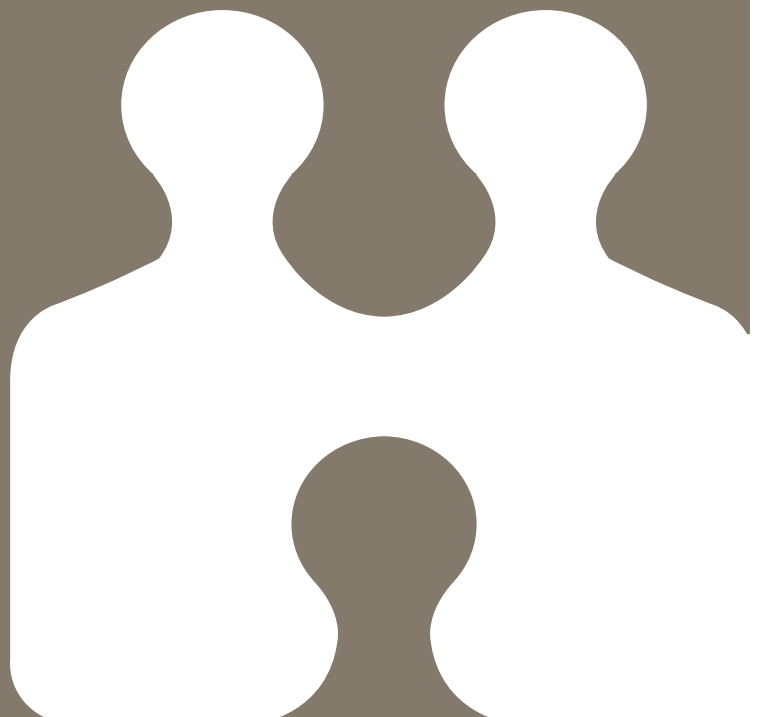


Guidance note: Instructing experts in applications for a financial order



This Guidance was reviewed in September 2016. The law or procedure may have changed since that time and members should check the up-to-date position.

Guidance note: Instructing experts in applications for a financial order

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Introduction

This guide is intended to assist practitioners in advising clients on when expert evidence is required, and instructing the expert in such a way as will be of maximum benefit to the client in assisting them, or the court, in reaching a resolution of a matter in dispute between the parties.

The instruction of experts in family proceedings is governed by Part 25 of the [Family Procedure Rules 2010](#) (the FPR) and the associated Practice Directions, which came into force on 6 April 2011 and were amended with effect from 31 January 2013. The Practice Direction in force prior to 31 January 2013 (PD 25A) has been replaced by a series of shorter Practice Directions (PDs 25A, B, C, D, E and F).

The content of the Practice Directions is as follows:

25A: Experts and Assessors in Family Proceedings

25B: The Duties of an Expert, the Expert's Report and Arrangements for an Expert to Attend Court

25C: Children Proceedings – The Use of Single Joint Experts and the Process Leading to an Expert Being Instructed or Expert Evidence Being put Before the Court

25D: Financial Remedy Proceedings and Other Family Proceedings (Except Children Proceedings) – The Use of Single Joint Experts and the Process Leading to Expert Evidence Being Put Before the Court

25E: Discussions between Experts in Family Proceedings

25F: Assessors in Family Proceedings

The FPR and Practice Directions together provide a detailed procedural framework, and largely replicate Part 35 of the Civil Procedure Rules 1998 (as amended).

Where the instruction of an expert is a consideration, it is important that it is proportionate to the case. The court has a duty, under Part 25.4(3), to restrict expert evidence to that which is necessary to assist the court to resolve the proceedings. Part 25.2 includes definitions for 'expert' and 'single joint expert', and the court has power under Part 25.11 to direct that evidence should be given by a single joint expert.

The general approach is that single joint experts should be instructed, rather than each party instructing their own expert. The instruction of a different expert for each party can have the effect of polarising the parties' positions, rather than bringing them closer to agreement, and can have a significant effect on the parties' costs.

In the event that the parties cannot agree on a single joint expert, an application to the court should be made to resolve this issue, rather than each party instructing their own experts. Baron J said in *K v K* [2005] 2 FLR 1137 (para 39) that ‘the general practice in the Family Division should be that only joint approaches are acceptable and if there is non-cooperation from one side, then this cannot be circumvented by unilateral action and should be dealt with by an application’.

However, this case predates the FPR. It is also worth noting that there are aspects of this position that conflicted with the then procedural rules, being Part 35 of the CPR (and now Part 25 FPR), such as in relation to raising questions of an expert.

Practitioners have a duty to consider, at an early stage, what expert evidence may be required. While it is common for experts to be instructed by both clients jointly, there are circumstances where one party will require an expert’s advice themselves. This may be to assist in completing the disclosure process, in preparing a questionnaire following the other party’s disclosure, or in advising on the way in which funds might be raised. There will therefore be certain situations where, in acting in the best interests of a client, the instruction of an expert solely for one party may be vital.

Is an expert required?

The instruction of experts in financial remedy proceedings is most commonly to value land or property, shares or an interest in a company or a business, or to advise on taxation issues and pensions, but expert evidence may be required in relation to a number of other issues, for example medical evidence.

Part 25.4(3) states that in every case where the instruction of an expert is potentially necessary, the first consideration should be whether the instruction and cost are proportionate to the case. Where the instruction of more than one expert is considered, this should be applied to each possible instruction.

Before deciding whether the instruction of an expert is necessary, it is important that the lawyer discusses with the client the advantages and disadvantages of doing so and whether there are any appropriate alternatives to a formal valuation in that particular case, for example market appraisals, or drive-by valuations. The client should be made aware of the likely cost of instructing an expert, and the lawyer should carry out, with the client, a cost-benefit analysis of obtaining a valuation.

In the event that the client does not agree to the instruction of an expert, it is important that they are advised about the court’s power, under Part 4.3, to make an order of its own initiative, which could include an order for the instruction of an expert.

If two or more parties wish to instruct an expert, the court has the power, under Part 25.11, to direct that the evidence is to be given by a single joint expert. Under Part 25.11(2), where the parties cannot agree on who should be instructed, the court may either select the expert from a list prepared by the relevant parties, or make a selection in such other manner as it sees fit.

The client should be advised that they may be ordered to pay all, or a proportion, of the expert's fees, if it is considered appropriate (Part 25.12(4)). If the court does not make specific direction, the parties shall be jointly and severally liable for the expert's fees (Part 25.12(6)).

However, where possible, it is preferable that the instruction of experts is discussed and agreed between the parties at an early stage, usually (but not always) after the exchange of financial disclosure has taken place, whether voluntarily, or within the court process (when permission should be sought at the first appointment, in accordance with Part 9.15).

The role of an expert

In practice, the role of the expert in financial remedy proceedings will be to provide information to enable the parties' lawyers to advise them, or to resolve a particular issue of dispute between the parties to enable settlement discussions or the court process to progress.

However, under Part 25.3, an expert has a duty to help the court on matters that are within their expertise. This duty overrides any obligation to the person (or persons) from whom they have received the instructions and by whom they will be paid.

No party may put expert evidence before the court (in any form) without the court's permission.

A party may be concerned that instructing a single joint expert may not produce the best result for them and that instructing their own expert would be to their advantage. It is the role of the lawyer to explain the benefits of a single joint expert, including that their role is an impartial one. The impartiality of a single joint expert is the most important aspect of their role in assisting to resolve matters between parties, rather than increasing the issues in dispute, which can easily happen if each party instructs their own expert. In any event, even where the parties want to submit evidence from separate experts, the court may direct that the evidence be given by a single joint expert (Part 25.11).

Expert evidence is often subjective and it is not uncommon for different experts to come to different conclusions on the same instructions, which is why finding the right single joint expert can be beneficial in resolving issues. Differing opinions between two experts can

make an agreement more difficult to reach and can lead to a case reaching a final hearing, with all of the costs that involves, when the matter may have been resolved without the need for a final hearing if a single joint expert had been instructed at an early stage.

Practitioners are under an obligation to consider whether the evidence of a single joint expert is in the best interest of their client. In more substantial asset cases, there may be a justifiable need for each party to have their own expert as the scope for a wide variation in valuations or opinion is greater. The importance of the need for supportive evidence in such cases should not be ignored. In this respect it is possible for the parties to agree to instruct separate experts (PD25D, 2.5).

When to instruct an expert

In acting in a client's best interest, it is therefore very important to consider at an early stage what evidence may be needed and approach the other party's solicitor to try to agree how this should be undertaken as soon as is practicable.

The possible need for expert evidence should be considered with the client at the first meeting, if appropriate, and the client should be made aware of the court's approach to the instruction of single joint experts and the cost implications of such evidence.

If expert evidence is required, it is usual to raise this with the other party at an early stage. If financial remedy proceedings have been commenced, then it may be appropriate to raise the need for such evidence in Form E. If the need for expert evidence will prevent one or both parties entering into an FDR hearing at the first appointment, it should be raised in the statement of issues filed with the court prior to the first appointment.

Part 25.6 deals with when the parties should seek permission to instruct an expert. In financial proceedings it should be no later than the First Directions Appointment (FDA).

If financial remedy proceedings have not been commenced and the parties have agreed to exchange voluntary financial information, it may be appropriate to consider what expert evidence is required with the client and then the other party soon after disclosure has been exchanged. This is to ensure that all of the information required to enable the lawyers to advise their respective clients and to enable the parties to make informed decisions about settlement has been obtained at an early stage.

If these issues have not been considered in the early stages of the proceedings, a settlement meeting or FDR hearing may have to be abandoned without a resolution being reached, causing wasted costs, further delay and more stress to the parties.

It will also be important to take into account what further information may need to be provided to an expert and the time it will take to obtain this. This will also be relevant to the proposed timescale for the provision of a report. The proposed timescale set out in the letter of instruction needs to be realistic to take into account that information will be requested by the expert and may take the client some time to produce.

Selecting an expert

The guidance around selecting an expert is contained in PD 25D paragraph 2. A party wishing to instruct an expert should give the other party a list of names of one or more experts whom they consider suitable (PD 25D, 2.1). The other party should respond within 10 business days (PD 25D, 2.2), indicating any objections to a proposed expert, and, if there are objections, supplying the name of one or more experts whom they consider suitable.

A single joint expert should not generally be someone that either party has instructed previously, unless otherwise agreed or if there are good reasons to the contrary. Each party should disclose whether they have already consulted any of the proposed experts about the issue in question (PD 25D, 2.3).

The specialism of the expert required will depend on the evidence that is required in a particular case. Research should be carried out as to an expert's suitability, including requesting a copy of their CV and anonymised details of previous instructions they have received in financial remedy cases. Costs are bound to be a significant consideration, but should not be the only one, as it is important to ensure the expert has the right qualifications and skills to produce a report.

Authority should be sought from the client to give a potential expert sufficient details of the case to enable them to confirm that no conflict of interest exists prior to their name being put forward as a possible single joint expert. Care should be taken to ensure that the implied duty of confidentiality is not breached.

If the parties cannot agree on the identity of a single joint expert, and there are not already proceedings in place, then an application to the court should be considered to enable the court to resolve this disagreement and order which expert, if any, should be instructed, so that the case can move forward productively. As noted above, under Part 25.11(2), where the parties cannot agree the identity of a single joint expert, the court may select the expert from a list prepared by the parties or direct that the expert be selected in another manner.

Making preliminary enquiries to a potential expert

This section also applies to cases where financial remedy proceedings have not been issued but the parties have agreed that a single joint expert should be instructed.

In cases where financial remedy proceedings have been issued, PD 25D must be complied with. Before instructions are given the parties should, so far as appropriate, comply with the guidance at paragraphs 3.3 and 3.4 to make preliminary enquiries of a potential expert and to obtain the following information (PD 25B 8.1):

- that there is no conflict of interest
- that the matter is within their range of expertise
- that the expert can provide the report within the timescale required
- whether the expert would be available for any dates that are known to be relevant
- whether there are any periods when the expert will not be available
- what the expert's likely fees will be, including their basis of charging and other terms of business
- if applicable, whether the expert will accept instructions on a publicly funded basis; and
- whether the expert wishes to make any representations to the court about being named or otherwise identified in any public judgment given by the court.

It can also be helpful to ask a potential expert, particularly in relation to the valuation of shares or an interest in a company or business, whether they have standard details of the information they will need to be produced in every case, which will enable them to then ask for more case-specific information. It is often dangerous to accept valuation evidence regarding a company from the company's own auditors, and caution is therefore advised.

The parties should also have agreed, if possible, in what proportion the single joint expert's fee is to be shared between them (at least in the first instance) and when it is to be paid. It is important that this point is clarified, as the default position under Part 25.12(6) is for the court to order joint and several liability.

It is, however, important that in obtaining the above information, one party or their solicitor does not use this as an opportunity to undertake informal discussions with the potential expert, as this may prejudice their impartiality or at least create suspicions in the mind of the other party's advisor. Carrying out the initial enquiries by email is advised so that there is transparency and all communications can be provided to the other side and to the court easily.

Application for permission to the court for expert evidence

An application to the court for permission to put expert evidence before it should comply with the provisions of Part 25.7. This sets out the information that must be included with such an application and helps to ensure that the purpose of the instruction (and, where possible, the identity of the expert) are clear, and that all the relevant preliminary enquiries have been made.

PD 25D 3.11 states that the application must include:

- the field in which the expert evidence is required
- where practicable, the name of the proposed expert
- the issues to which the expert evidence relates
- whether the expert evidence could be obtained from an SJE
- the discipline, qualifications and expertise of the expert (by way of CV where possible)
- the expert's availability to undertake the work
- the timetable for the report
- the responsibility for instruction
- whether the expert evidence could properly be obtained by only one party
- why the expert evidence proposed cannot properly be given by the expert already instructed in the proceedings
- the likely cost of the report on an hourly or other charging basis
- the proposed apportionment (at least in the first instance) of any jointly instructed expert's fee, when it is to be paid, and, if applicable, whether public funding has been approved
- the issues in the proceedings to which the expert evidence relates
- the party who is to be responsible for drafting the letter of instruction and providing the documents to the expert
- the timetable within which the report is to be prepared, filed and served
- the disclosure of the report to the parties and to any other expert
- the organisation of, preparation for and conduct of any experts' discussion

- the preparation of a statement of agreement and disagreement by the experts following an experts' discussion
- making available to the court at an early opportunity the expert reports in electronic form
- the attendance of the expert at court to give oral evidence (or remotely by video link) whether at or for the final hearing or another hearing, unless agreement about the opinions given by the expert is reached by a date specified by the court before the hearing at which the expert is to give oral evidence.

The joint letter of instruction

The joint letter of instruction sets out the basis of the evidence that is being sought from the expert and forms the basis of their report.

Single joint experts should be instructed by a jointly agreed letter unless the court directs otherwise (Part 25.12(1)). Paragraph 4.1 of Practice Direction 25D deals with the contents of the letter in detail. The joint letter of instruction therefore should be agreed between the parties, or their solicitors, in advance of the letter being sent to the expert, and both parties or their solicitors should sign the letter.

The information provided to an expert with a joint letter of instruction will depend on the case itself and the level of disclosure that has taken place at the time of the instruction. It may be that the expert is asked to produce a list of the information that they require, but it is helpful to provide at least basic information and documents to enable the expert to request more detailed information.

If the expert is instructed but proceedings have not been issued, the joint letter of instruction should make it clear to the expert that they may in due course be reporting to the court (PD 25A, 3.1).

If proceedings have been issued, PD 25D paragraph 4.1 specifies that the joint letter of instruction shall be prepared, filed and served on the expert within five working days of the permission hearing.

If the instruction of an expert has not been, or cannot be, agreed between the parties, then a draft joint letter of instruction should be prepared in advance of the first appointment (or other hearing of an application to instruct a single joint expert if not the first appointment) for the court's consideration. In the event that the parties cannot agree on the terms of the joint letter, the court can approve the letter of instruction, with or without amendment as it sees fit. If the disagreement occurs after the relevant hearing, the court (or, by prior

arrangement, the judge dealing with the proceedings) can be called upon to settle the letter of instruction by email (copied to all parties), and will usually do so without a hearing to avoid delay (Part 25.12(2) and PD 25D 6.1).

It is crucial to allow in the timetable for any potential delay incurred by agreement still needing to be reached on the terms of the letter of instruction, costs or the information to be provided, to ensure that the expert then has sufficient time to obtain further instruction, review this and prepare their report.

Paragraph 4.1 of PD 25D states that the joint letter of instruction should include:

- the context in which the expert's opinion is sought
- the specific questions to be answered, ensuring that they:
 - (i) are within the ambit of the expert's area of expertise
 - (ii) do not contain unnecessary or irrelevant detail
 - (iii) are kept to a manageable number and are clear, focused and direct; and
 - (iv) reflect what the expert has been requested to do by the court
- a list of the documentation provided, or indexed and paginated bundle, including:
 - (i) an agreed list of essential reading; and
 - (ii) copies of PD 25B, 25D and 25E, and, where appropriate, PD 15B
- a list identifying any materials provided to the expert which have not been produced either as original medical (or other professional) records or in response to an instruction from a party, and state the source of that material
- a list identifying any requests to third parties for disclosure, and their responses
- a list identifying the relevant people concerned with the proceedings and informing the expert of his or her right to talk to them provided the expert makes an accurate record of the discussions
- confirmation of the contractual basis upon which the expert is retained and in particular by whom, how much and when the expert will be paid.

It is good practice and therefore recommended that the joint letter should also include:

- basic relevant information
- any assumptions to be made

- the principal known issues
- arrangements for attendance at a property, business or accountant's office or other place
- documents necessary for the expert's consideration of the case, sufficient for the purpose, clearly legible, properly sorted, paginated and indexed; and
- details of third parties relevant to the appointment including:
 - (a) third parties who have been asked for disclosure
 - (b) other experts involved in the case; and
 - (c) any other parties relevant to the dispute and their contact details.

The issue of timing of the report should also be dealt with specifically in the joint letter of instruction.

Appendices A to C contain three example letters:

- a joint letter of instruction to value a property
- a joint letter of instruction to value shares in a company/interest in a business; and
- a joint letter of instruction to report on pension sharing.

The letters are intended to be a guide to practitioners only – they are not exhaustive of the issues that may need addressing in individual cases. It is important that careful consideration is given to the joint letter of instruction and the key issues on which the expert is being asked to report on a specific case-by-case basis.

Communications with an expert

Part 25.12(3) provides that any instructions to the expert by one party should be simultaneously copied to the other party.

It is good practice for all communications with a single joint expert, including communications both to and from the expert, to be addressed to both parties or their lawyers, and any communication with one party should be copied to the other. This can be done easily with letters and email correspondence, but care should be taken with telephone discussions with an expert. It is recommended that they are avoided, unless it has been agreed in writing between the parties in advance that a discussion can take place. In the event that telephone discussions take place between one party, or their solicitor, and an

expert, it is advised that a contemporaneous attendance note is prepared and a copy sent to the other party or their solicitor immediately.

Part 25.8(3) further provides that separate instructions to a single joint expert should only be given with the court's permission. It is likely the court will consider issues of proportionality and whether or not the other party agrees.

Providing further information to the expert

It is common for the expert, having received the joint letter of instruction, to request further information from one or both of the parties. Any further information should be provided promptly according to the agreed timescale and copies of all information provided to the expert should again be clearly legible, properly sorted, paginated and indexed (where it is proportionate to do so), and copies should be provided to both parties' solicitors.

The court can direct one party to produce information to the expert where it is not reasonably available to the other party under Part 25.13. Under Part 25.17 the expert may file written requests to the court for directions for the purpose of assisting them in carrying out their functions.

A copy of any order or other document affecting the expert which is filed at court after the expert has been instructed must be served on the expert by the instructing party within two days of that party receiving the order or document (Part 25.18).

Meetings with the expert

Any meetings with an expert should be proportionate to the case. In the event that a meeting with the expert, or an inspection of a property or premises for example, is required, it is recommended that either both or neither party attend. A single joint expert should not attend a meeting with only one of the parties unless the court has directed or the parties have agreed in writing and it is agreed or directed who is to pay the expert's fees for the meeting (PD 25E, 4.1). If it is only possible or practical for one party to attend, practitioners should consider whether it would be appropriate for a contemporaneous attendance note to be requested from the expert of the discussions with one party at the meeting or inspection. The proportionality, particularly in respect of costs, should be considered before such a request is made.

The expert's report

This should be provided in writing (Part 25.9) and served on both parties simultaneously. It is recommended that an additional copy is requested and filed with the court.

The report must comply with the requirements of PD 25B, including that at the end of the report there must be a statement that the expert understands and has complied with their duty to the court (Part 25.14(2)). The report must be verified by a statement of truth. PD 25B 9.1 sets out in detail what should be included.

Questions following the expert's report

Part 25.10 provides that either party may put written questions to the expert within 10 days beginning with the date on which the report was served. The questions may only be put to the expert once, and must be for the purpose of clarification of the report only. In the event the questions go further than that, agreement must be obtained from the other party, or permission from the court.

As with all communications with an expert, they should be copied to the other party, or their solicitor, simultaneously.

Expert's attendance at court

The courts are generally reluctant to hear oral evidence from experts at hearings as it increases the costs for the parties and the judicial time required for the hearing. The instruction of single joint experts means that the attendance of experts at hearings is no longer commonplace and is now the exception rather than the rule. Part 25.9(2) provides that the court will not direct an expert to attend a hearing unless necessary to do so in the interests of justice.

If it is necessary for an expert to attend court to give oral evidence (usually at the final hearing), this must be with permission from the court. This is usually sought at the FDR hearing when directions for the final hearing are set down.

If there is a possibility that an expert may be required to attend and give evidence to the court, it is important that the listing of a final hearing is carried out subject to the expert's availability.

The party responsible for the instruction of the expert, or the 'lead' solicitor in the case of a single joint expert, must comply with PD 25B 10.1 and 10.2 and Part 25.19 prior to, during and after the hearing.

If an expert is required to attend court and the hearing is listed for more than one day, it is usual for them to attend on the first day, to enable them to give evidence first, so that the costs of their attendance are kept to a minimum.

It can often be useful for an expert to attend court to hear the evidence of the parties, especially if one or both parties have instructed their own experts, to enable them to hear the other party's evidence or to support counsel in cross-examination. However, the potential costs do need to be taken into account and the need considered in light of proportionality to the case.

When enquiring as to the costs of an expert preparing a report, this should include the costs of the expert attending court if required to do so, not just of preparing the written report itself.

Two experts

It is worth noting that, following the case of *Daniels v Walker* [2000] 1 WLR 1382, in some instances there may be a possibility of obtaining the court's permission to obtain a report from an expert acting for only one party.

In these cases, practitioners should consider what directions are going to be necessary following the instruction of separate experts for each party, such as whether the experts should meet to discuss areas of agreement and disagreement between them and whether this should be recorded in an agreed schedule. The court can order discussions between experts under Part 25.16 and that, following a discussion, the experts prepare a statement for the court setting out the issues on which they agree and disagree, including their reasons for disagreeing (Part 25.16(3)). This can often be a cost-effective way of identifying the areas to be resolved between the parties or by the court. If separate experts are to be instructed, it is important that meetings, discussions and documentation of what can and cannot be agreed are timetabled at an early stage.

Further guidance on the subject of experts' discussions and meetings are given in paragraphs 2.1 and 3.1 of PD 25E.

'Shadow experts'

In some cases, it may be necessary to instruct a 'shadow expert' to assist in advising the client on matters that are outside the lawyer's expertise, for example, an accountant or tax advisor.

Shadow experts should not be instructed in place of a single joint expert. Where an issue requires expert evidence, a single joint expert should be instructed wherever possible. However, shadow experts can assist in deciding whether expert evidence is required, or in advising the clients on aspects of the expert's evidence once their report has been provided. They can also assist in reviewing the single joint expert's report and identifying any further questions that may need to be put to the expert, jointly by the parties where possible.

The instruction of shadow experts should only be considered in cases where it is proportionate, and would be in the client's best interest to do so. The advice of a shadow expert cannot be put to the court without permission, which is unlikely to be granted in most cases where a single joint expert has been, or could be, instructed.

The instructions of a shadow expert will increase the instructing party's costs and therefore it is important that the costs implications are considered and discussed with the client before the instruction is carried out. It may be more appropriate for another lawyer in the same firm to advise in place of a shadow expert, if that expertise is available. However, this will not always be the case and therefore shadow experts can be important members of a client's advisory team, in the right circumstances.

It should also be noted that it will not usually be appropriate for a shadow expert to then be appointed as a single joint expert in the case.

Professional codes of conduct

Resolution members should remember that regardless of whether the party instructing an expert or they themselves are the expert, they are still bound by the Resolution Code of Conduct and to the extent that it is relevant, their own professional Codes of Conduct. This is regardless of whether they are giving expert evidence in this jurisdiction or elsewhere.

Appendix A: example joint letter of instruction to value a property

Mr J Smith
Smith Surveyors & Co
123 Main Street
Uptown UP1 2HA

Dear Sir

Valuation Report for the Purposes of Family Proceedings

Mr and Mrs Jones: Uptown House, Main Street, Uptown, UP5 2DR

This letter is written on the joint instruction of Mr and Mrs Jones, who are involved in divorce and associated financial proceedings in the Uptown County Court.

Mr Jones is represented by Mr White of A Firm LLP and Mrs Jones is represented by Ms Green of Law & Co Solicitors of 65 New Street, Uptown, UP1 3KT (Ref: SG).

[It has been agreed] or [An order has been made by District Judge Smith in the Uptown County Court on [] that a report should be prepared by a Single Joint Expert about the above named property. [A copy of the order is enclosed]

The purpose of this letter is to set out your formal instructions to act as the Single Joint Expert in this matter.

Background

Uptown House is registered under title number [] with HM Land Registry. The [freehold][leasehold] title is owned by Mr and Mrs Jones. Mrs Jones is currently living at the property with the parties' three children.

[NB: Include a description of the property including:

- who owns the property
- title number or whether unregistered
- whether detached, semi-detached or terraced

- number of bedrooms and reception rooms
- whether there is any land with the property
- whether the property, or any part of it is let; and
- what the property is used for, i.e. residential, commercial etc.]

Preliminary information supplied

With this letter we are attaching the following preliminary information:

[NB This list is not exhaustive. The expert may have their own list of information that needs to be provided at the outset, but provision of the following information should be considered:

1. court order containing direction for valuation
2. office copy entries/index map search for the property
3. copies of any lease or tenancy agreement(s) relating to the property
4. plans (if relevant).]

You should, at your discretion, ask Mr and Mrs Jones for any additional information that you require, but all requests should be made in writing and copied to both parties' solicitors.

Nature of instructions

Your instructions are to prepare a report as the single joint expert on the following issues:

- a) The [fair][market] value of Uptown House.
- b) [Any other issues particular to the property being valued].

When preparing your report, you should assume the following:

- A willing seller.
- Sale with vacant possession and unencumbered.
- The best price which a willing buyer could reasonably be expected to pay a willing seller for the purchase of the property.
- [Any other assumptions the single joint expert is to make in preparing report]

As you will be aware, the instruction of experts in family proceedings is set out in Part 25 of the Family Procedure Rules 2010 ('FPR'). Please note in particular Part 25.14, which sets out

details of the contents of an expert's report and the statement required at the end of your report under Part 25.14(2).

We are attaching a copy of Part 25 and of the relevant Practice Directions to Part 25, known as PD 25A, B, D and E.

As a jointly instructed expert you should not enter into correspondence or engage in conversations with one party or their advisers without copying it to the other party or their solicitor, as your role in the proceedings is an impartial one.

If there is any aspect of this letter which is unclear, please write to both A Firm LLP and Law & Co Solicitors to raise any issues or questions which may arise, including proportionality, lack of clarity or completeness in the instructions and/or the possible effect on fees of complying with the instructions.

[Although this instruction is not following a court order, it is possible that you] [You should be aware that you] may be required to give evidence in person to the Court following your report, by attending a hearing in the case. [Please confirm that you would be willing to do so and if you are aware of any dates that you are unavailable in the next [] months, please notify us of these.]

Inspecting the Property

You will need to carry out an inspection of the property and both parties or their representatives [NB or neither party – consider a third party] should be present at the inspection. We suggest you should arrange a time which is mutually convenient to both by contacting [Mr and Mrs Jones directly] [both parties' solicitors].

Contact details

Mr Jones can be contacted on [telephone number and email]. Mrs Jones can be contacted on [telephone number and email].

[NB Consider whether it is appropriate in each case to include the parties' contact details in the letter as one party may not want the other party to have their contact details in some circumstances. It may be more appropriate for the expert to contact the solicitors for their respective clients' contact details].

Timing

[The court has ordered] or [It has been agreed] that this report should be produced by no later than [].

If you believe that you cannot prepare your report within that timescale please let us know as soon as possible and provide an indication of the timescale that you would consider realistic to complete your report.

Your fees

Mr and Mrs Jones accept that they will each be responsible for 50% of your charges and each solicitor should be invoiced for one half of your fees [or alternative details as agreed or ordered]. Separate invoices should be addressed to [each firm of solicitors] [each client].

[NB Consider what the appropriate costs position should be for the costs associated with raising questions after the report. These costs will usually be in addition to the costs of the main report and therefore how they are to be paid should be dealt with at the outset. A request for this to be included in the directions made by the court is suggested, for example:

In the event that either party raises questions about your report, the party who raises those questions will be responsible for your costs of answering the questions and a separate invoice should be raised for that purpose [NB or alternative details as agreed or ordered].]

You have indicated that you envisage your fee will be [£] plus VAT for the production of your report [inclusive or exclusive of expenses/disbursements]. [Please do not start work on your report until you have provided us with your costs estimate and that estimate has been accepted by both parties.]

Please also indicate what your fees will be for attendance at a hearing, in the unlikely event that this is required.

Law & Co Solicitors have confirmed their agreement to these instructions by countersigning this letter/writing to you direct.

Could you please send one copy of your report to each solicitor and one additional copy to us for filing at court.

We look forward to hearing from you.

Yours faithfully

A FIRM LLP

LAW & CO SOLICITORS

Dated:

Appendix B: example joint letter of instruction to value shares in a company/interest in a business

Mrs A Brown
Brown Accountants LLP
35 River Street
Uptown
UP1 2GE

Dear Madam

Valuation Report for the Purposes of Family Proceedings

Mr A and Mrs S Jones: ABC Limited

This letter is written on the joint instruction of Mr and Mrs Jones, who are involved in divorce and associated financial proceedings in the Uptown County Court.

Mr Jones is represented by Mr White of A Firm LLP and Mrs Jones is represented by Ms Green of Law & Co Solicitors of 65 New Street, Uptown, UP1 3KT (Ref: SG).

[It has been agreed] or [An order has been made by District Judge Smith in the Uptown County Court on []] that a report should be prepared by a Single Joint Expert about the above named company. [A copy of the order is enclosed]

The purpose of this letter is to set out your formal instructions to act as the Single Joint Expert in this matter.

Background of company

[NB Briefly describe nature of business and party or parties' role in it, family connections, role of third parties.]

Preliminary information supplied

With this letter we are attaching the following preliminary information:

[NB This list is not exhaustive. The expert may have their own list of information that needs to be provided at the outset, but provision of the following information should be

considered. Also see Charles J's comments on the likely information to be required by an expert valuing a company, the likely questions to raise of the expert, and other issues arising following the information produced and the questions raised in *D v D* [2007] EWHC 278 (Fam) at paragraph 106.]:

- The court order containing direction for valuation
- Pages [x to y] of Mr and/or Mrs Jones' Form E [NB those pages relevant to company/business]
- The memorandum and articles of association of the company/partnership deed
- The shareholders' agreement dated [] [(NB if a company)]
- The accounts for the last three years [(NB if a company)]
- The management accounts since the last year end [(NB if a company)]
- The shareholders' register (if a company) [(NB if a company)]
- The register of directors (if a company) [(NB if a company)].

You should, at your discretion, ask Mr and Mrs Jones for any additional information that you require, but all requests should be made in writing and copied to both parties' solicitors.

Nature of instructions

Your instructions are to prepare a report as the Single Joint Expert on the following issues:

[NB consider carefully what the expert is being asked to report on. This list is intended to cover a number of the questions that may be raised, but is not exhaustive, and not all of the issues will be relevant in every case.]

- The value of Mr and/or Mrs Jones' shares in ABC Limited
- The ways in which that value could be realised whether by a sale, a purchase by the company of its own shares. or otherwise by [Mr and/or Mrs Jones]
- the tax consequences of:
 - (i) a sale of shares; or
 - (ii) a transfer of shares between Mr and Mrs Jones;
- The income which Mr and/or Mrs Jones is and will be able to draw if ABC Limited is retained
- [Any assumptions the single joint expert is to make in preparing their report].

As you will be aware, the instruction of experts in family proceedings is set out in Part 25 of the Family Procedure Rules (FPR). Please note in particular Part 25.14 that sets out details of the contents of an expert's report and the statement required at the end of your report under Part 25.14(2).

We are attaching a copy of Part 25 and of the relevant Practice Directions to Part 25, known as PD 25A, B, D and E.

As a jointly instructed expert you should not enter into correspondence or engage in conversations with one party or their advisers without copying it to the other party or their solicitor, as your role in the proceedings is an impartial one.

If there is any aspect of this letter which is unclear, please write to both A Firm LLP and Law & Co Solicitors to raise any issues or questions which may arise, including proportionality, lack of clarity or completeness in the instructions and/or the possible effect on fees of complying with the instructions.

[Although this instruction is not following a court order, it is possible that you] [You should be aware that you] may be required to give evidence in person to the court following your report, by attending a hearing in the case. [Please confirm that you would be willing to do so and if you are aware of any dates that you are unavailable in the next [] months, please notify us of these.]

Meeting the parties/visiting the company

[NB Consider whether a meeting is necessary and proportionate to the case.]

In the event that you feel it is necessary to visit ABC Limited and/or meet Mr and/or Mrs Jones, then both parties or their representatives should be present at all meetings. We suggest you should arrange a time which is mutually convenient to both by contacting [both parties directly][both parties' solicitors].

Contact details

Mr Jones can be contacted on [telephone number and email]. Mrs Jones can be contacted on [telephone number and email].

[NB Consider whether it is appropriate in each case to include the parties' contact details in the letter as one party may not want the other party to have their contact details in some circumstances. It may be more appropriate for the expert to contact the solicitors for their respective clients' contact details]

You may also wish to speak with the company/business accountants, who have authority to disclose information to you. If you do, their contact details are as follows:]

Tel:

E-mail:

Timing

[The court has ordered] or [It has been agreed] that this report should be produced by no later than [].

If you believe that you cannot prepare your report within that timescale please let us know as soon as possible and provide an indication of the timescale that you would consider realistic to complete your report.

Your fees

Mr and Mrs Jones accept that they will each be responsible for 50% of your charges and each solicitor should be invoiced for one half of your fees [or alternative details as agreed or ordered]. Separate invoices should be addressed to [each firm of solicitors] [each client].

[NB consider what the appropriate costs position should be for the costs associated with raising questions after the report. These costs will usually be in addition to the costs of the main report and therefore how they are to be paid should be dealt with at the outset. A request for this to be included in the directions made by the court is suggested, for example:

In the event that either party raises questions about your report, the party who raises those questions will be responsible for your costs of answering the questions and a separate invoice should be raised for that purpose [or alternative details as agreed or ordered].]

You have indicated that you envisage your fee will be [£] plus VAT for the production of your report [inclusive or exclusive of expenses/disbursements]. [Please do not start work on your report until you have provided us with your costs estimate and that estimate has been accepted by both parties.]

Please also indicate what your fees will be for attendance at a hearing, in the unlikely event that this is required.

Law & Co Solicitors have confirmed their agreement to these instructions by countersigning this letter/writing to you direct.

Could you please send one copy of your report to each solicitor and one additional copy to us for filing at court.

We look forward to hearing from you.

Yours faithfully

A FIRM LLP

LAW & CO SOLICITORS

Dated:

Appendix C: example joint letter of Instruction to report on pension sharing or earmarking

Mr D Jones
Jones Pension Consultants
1 High Street
Uptown
UP1 3YH

Dear Sir

Pension Report for the Purposes of Family Proceedings

Mr and Mrs Jones

This letter is written on the joint instruction of Mr and Mrs Jones, who are involved in divorce and associated financial proceedings in the Uptown County Court.

Mr Jones is represented by Mr White of A Firm LLP and Mrs Jones is represented by Ms Green of Law & Co Solicitors of 65 New Street, Uptown, UP1 3KT (Ref: SG).

[It has been agreed]/[An order has been made] by District Judge Smith in the Uptown County Court on [] that a report should be prepared by a single joint expert about [Mr Jones’][Mrs Jones’][the parties’] pension provision and pension sharing [or attachment orders]. [A copy of the order is enclosed.]

The purpose of this letter is to set out your formal instructions to act as the Single Joint Expert in this matter.

Background

Mr Jones’ date of birth is [] and he works as a []. Mrs Jones’ date of birth is [] and she works as a [].

Both parties are in good health and neither party is a smoker.

The parties’ respective pension assets are summarised in the table below:

Pensions	Mr Jones (CEV)	Mrs Jones (CEV)
XYZ Insurance Plc	£156,345	

DEF Limited	£78,639	
ABC Retirement Benefit Scheme		£32,987
Total Pension CEVs	£234,984	£32,987

We enclose the following documentary evidence:

[NB This list is not exhaustive. The expert may have their own list of information that needs to be provided at the outset, but provision of the following information should be considered.]

Paragraph 2.13 from each parties' Form E and supporting documents, including evidence of CEVs;

Form P for each policy and the response from the pension provider/trustee

State Pension forecasts for each party

We anticipate that you will need to obtain additional information and letters of authority from both parties to enable you to obtain that information directly from the pension providers are also enclosed.

Nature of instructions

[NB Consider carefully what the expert is being asked to report on. This list is intended to cover common requests, but is not exhaustive.]

You are therefore instructed, as a single joint expert, to provide a report advising on:

the pension sharing order or orders that would achieve equalisation of pension benefits in retirement, both in respect of income and lump sum, based on the current CEVs of the parties' pensions; and/or

the pension sharing order or orders that would be required to achieve equalisation of CEVs, based on the current CEVs of the parties' respective pensions; and/or

[NB consider whether the report should include evidence on attachment orders or offsetting.]

It should be assumed for the purposes of your report that:

[NB These are just examples of assumptions that may be relevant. Again, it is important that the purpose of the report, and therefore the basis on which it is being requested, is considered carefully in each case. These may or may not be relevant and are not exhaustive or in any way standard assumptions.]

Mr Jones will retire at age [] and Mrs Jones will retire at age [].

State Pension will be taken into account (for the purposes of 2(a) above);

Pensions should increase in payment at equivalent rates.

There will be no income from other sources (so that income tax treatment will be equal).

As you will be aware, the instruction of experts in family proceedings is set out in Part 25 of the Family Procedure Rules ("FPR"). Please note in particular Part 25.14, which sets out details of the contents of an expert's report and the statement required at the end of your report under Part 25.14 (2).

We are attaching a copy of Part 25 and of the relevant Practice Directions to Part 25, known as PD 25A, B, D and E.

As a jointly instructed expert you should not enter into correspondence or engage in conversations with one party or their advisers without copying it to the other party or their solicitor, as your role in the proceedings is an impartial one.

If there is any aspect of this letter which is unclear, please write to both A Firm LLP and Law & Co Solicitors to raise any issues or questions which may arise, including proportionality, lack of clarity or completeness in the instructions and/or the possible effect on fees of complying with the instructions.

[Although this instruction is not following a court order, it is possible that you] [You should be aware that you] may be required to give evidence in person to the Court following your report, by attending a hearing in the case. [Please confirm that you would be willing to do so and if you are aware of any dates that you are unavailable in the next [] months, please notify us of these.]

Timing

[The court has ordered] or [It has been agreed] that this report should be produced by no later than [].

If you believe that you cannot prepare your report within that timescale please let us know as soon as possible and provide an indication of the timescale that you would consider realistic to complete your report.

Your fees

Mr and Mrs Jones accept that they will each be responsible for 50% of your charges and each solicitor should be invoiced for one half of your fees [or alternative details as agreed or ordered]. Separate invoices should be addressed to [each firm of solicitors] [each client].

[NB Consider what the appropriate costs position should be for the costs associated with raising questions after the report. These costs will usually be in addition to the costs of the main report and therefore how they are to be paid should be dealt with at the outset. A request for this to be included in the directions made by the court is suggested, e.g.:

In the event that either party raises questions about your report, the party who raises those questions will be responsible for your costs of answering the questions and a separate invoice should be raised for that purpose [or alternative details as agreed or ordered].]

You have indicated that you envisage your fee will be [£] plus VAT for the production of your report [inclusive or exclusive of expenses/disbursements]. [Please do not start work on your report until you have provided us with your costs estimate and that estimate has been accepted by both parties.]

Please also indicate what your fees will be for attendance at a hearing, in the unlikely event that this is required.

Law & Co Solicitors have confirmed their agreement to these instructions by countersigning this letter/writing to you direct.

Could you please send one copy of your report to each solicitor and one additional copy to us for filing at court.

We look forward to hearing from you.

Yours faithfully

A FIRM LLP

LAW & CO SOLICITORS

Dated: